IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 553 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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PATEL BHIMJIBHAI BHOVANBHAI - Petitioner(s)

Versus

RANIBEN RUDEBHAI WD/O DECD. RUDABHAI - Respondent(s)

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Appearance :

MR DEEPAK M SHAHfor Petitioner No(s).: 1.
MR DU SHAH for Petitioner No(s).: 1.
MRRAJANDSHAHfor Petitioner No(s).: 1.

None for Respondent No(s).: 1,1.
UNSERVED-EXPIRED (N) for Respondent No(s).: 1.

MR RC JANI for Respondent No(s).: 1 - 1,1 - 1.

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CORAM :HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 06/07/2005

ORAL JUDGMENT

1. By filing instant Civil Revision Application under Section 115 of the Code of Civil Procedure, the petitioner seeks to challenge the common order dated 25.01.1997 recorded below application exh.21 and 25 in Regular Civil Suit No. 107 of 1993 by the learned Joint Civil Judge (JD), Junagadh by which the application filed by the petitioner seeking condonation of delay and also for impleading heirs and legal representatives of the deceased defendant came to be rejected.
2. As per the averments made in the plaint, the petitioner herein took a loan of Rs.3000/- by pledging gold ornaments worth Rs.1,00,000/- with the defendant Patel Ranchod Nathubhai, for the purchase of residential house at village Mendara, Taluka District Junagadh. The petitioner has filed Regular Civil Suit No. 107 of 1993 on 22.2.1993 for redemption of mortgage and for recovery of the ornaments. Pending the suit proceedings, the original defendant Patel Ranchhod Nathubhai has expired on 15.11.1994. The Plaintiff preferred application Exh.21 for permitting him to implead heirs and legal representatives of deceased defendant Ranchhod Nathubhai on record and also preferred application exh.25 seeking condonation of delay caused in filing the application to implead heirs and legal representatives of the deceased defendant Patel Ranchhod Nathubhai. Both the applications were heard together and vide order dated 15.1.1997 passed by the learned 1st Joint Civil Judge (JD), Junagadh, both the applications came to be rejected by observing that the application for setting aside the abatement has not been filed, therefore both the applications were not tenable.
3. Mr. Deepak M. Shah, learned advocate of the petitioner, contended that the learned trial Judge has erred in observing that the petitioner should have filed application for setting aside the abatement and since no application was filed both the applications were not tenable. According to him, no separate application is required to be field if the petitioner has filed application for bringing on record the heirs and legal representatives of the deceased defendant.
4. In support of the aforesaid contention, Mr. Shah, learned advocate has relied upon the decision of this Court in the case of Matuben S. Sejpal v/s. Anantbhai Tekchand, 1995 (1) GLR page 351. He, therefore

urged that the impugned order deserves to be quashed and set aside by allowing this Civil Revision Application. He, therefore urged to allow this Revision Application.

5. Mr. R.C.Jani, learned advocate of the respondents, contended that no infirmity or illegality is committed by the learned trial Judge in rejecting both the applications. According to him the petitioner has not shown sufficient cause in the application seeking condonation of delay for condoning the delay. According to him it was within the knowledge of the petitioner that the original defendant has died on 15.11.1994 notwithstanding that he has averred in the application that he came to know about his death on 6.5.1995. Therefore the petitioner has made a wrong statement of fact in the application and in that view of the matter, the learned trial Judge has very rightly rejected the application seeking condonation of delay. It is also asserted by him that without filing application for setting aside the abatement, application for bringing the heirs and legal representatives of the deceased on record, is not tenable.
6. In support of the aforesaid contention he has relied upon the decision of the Supreme Court in the case of State of Gujarat v/s. Sayed Mohd. Baquir El Edross, AIR 1981 SC 1921.
7. The sum and substance of the submissions made by Mr. R.C.Jani, learned advocate of the respondents is that no interference is called for in the impugned order. He therefore urged to dismiss the present Civil Revision Application.
8. This Court has considered the submissions advanced by the learned advocates appearing for the parties, perused the impugned order and also the judgements cited at the bar.
9. So far as the factual matrix is concerned, there is no dispute between the parties that the petitioner has instituted Regular Civil Suit No. 107 of 1993 for redemption of mortgage and for recovery of the ornaments against the respondents herein. Similarly, deceased Patel Ranchhod Nathubhai has also instituted Cross Suit being Regular Civil Suit No. 10 of 1994 claiming the relief of recovery of Rs. 10,000/- from the plaintiff. In the said Suit, heirs and legal representatives of deceased Patel Ranchhod Nathubhai were already brought on record. According to this Court, delay caused in filing the application to implead the heirs and legal representatives of the deceased defendant have been sufficiently explained. In the matter of seeking condonation of delay the Court has to construe the pleadings liberally. It is settled proposition of law that no matter should be thrown over board without giving the opportunity of hearing to the parties.

10. In the instant case the learned trial Judge has rejected the application only on the ground that the petitioner was very much aware about the fact that the defendant has died on 15.11.1994 but he has wrongly stated that he came to know about the same on 6.5.1995. According to this Court, when in the Cross Suit filed by the deceased Patel Ranchhod Nathubhai, his heirs and legal representatives, have already been impleaded then there is no reason to reject the application filed by the petitioner, seeking impleadment of the heirs and legal representatives of the defendant.

11. The learned trial Judge has observed that without filing the application seeking the prayer of setting aside the abatement, application to implead the heirs and legal representatives of the defendant is not tenable, is erroneous finding. In the case of Matuben S. Sejpal v/s. Anantbhai Tekchand (supra) this Court has held that *an application for bringing on record the legal representatives of a deceased party made after the period of limitation has expired and which contains a prayer for condonation of delay impliedly means that there is an application for setting aside abatement, a separate application is not necessary*.

12. In aforesaid view of the matter, according to this Court, the order which is impugned in this Civil Revision Application, is required to be quashed and set aside by allowing this Civil Revision Application.

13. For the foregoing reasons, this Civil Revision Application succeeds and accordingly it is allowed. The common order dated 25.1.1997 recorded below application exh. 21 and 25 in Regular Civil Suit No. 107 of 1993 by the learned 1st Joint Civil Judge (JD), Junagadh is hereby quashed and set aside, the result of which is that both the applications are allowed. The petitioner is permitted to implead heirs and legal representatives of the deceased defendant in the cause-title of the Suit. The learned trial Judge is directed to proceed for expeditious hearing of Regular Civil Suit No. 107 of 1993 as well as Cross Suit bearing No. 10 of 1994, filed by the respondents against the present petitioner.

(A.M.Kapadia,J)

Jayanti*